

STATE OF MICHIGAN
COURT OF APPEALS

FRANKENMUTH MUTUAL INSURANCE
COMPANY, as subrogee of PAUL KEMEZIS,
and STATE FARM INSURANCE COMPANY, as
subrogee of SUMMIT RIDGE CONDO
ASSOCIATION,

Plaintiffs-Appellants,

v

DETROIT EDISON COMPANY,

Defendant-Appellee.

UNPUBLISHED

July 12, 2005

No. 261394

Oakland Circuit Court

LC No. 2004-055669-CZ

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

BORRELLO, J. (*dissenting*).

I respectfully dissent from the majority's opinion because summary disposition for defendant pursuant to MCR 2.116(C)(10) may only be granted when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." In this matter there are numerous questions of fact. First, there is a genuine issue of material fact regarding whether the homeowners were "customers" of defendant. Secondly, there is a genuine issue of material fact regarding whether the homeowners ever received proper notice of shutoff. Additionally, the majority's reliance on *Sanders v Detroit Edison Co*, 147 Mich App 20; 383 NW2d 85 (1984), in reaching the conclusion that defendant did not owe a statutory duty to inform the homeowners of shutoff is misplaced. In *Sanders*, the court was dealing with an individual who had illegally turned on the power. Thus, the *Sanders* court properly reasoned there was no duty on the part of the utility company to inform a person who had illegally turned on power that the utility company was shutting off that power supply. However, the facts before us are far different. In this case, defendant is arguing that because they failed to bill the homeowners, the homeowners were never customers, and as such, defendant, by their own failure to properly bill the homeowners, can then further compound the problem by shutting off all power without prior notice of intent to undertake such an action. Such reasoning defies logic.

For these reasons I respectfully dissent and would remand this matter to the trial court for further proceedings.

/s/ Stephen L. Borrello